

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

NO. 17-CR-20274

v.

HON. BERNARD A. FRIEDMAN

D-1 JUMANA NAGARWALA,
D-2 FAKHRUDDIN ATTAR,
D-3 FARIDA ATTAR,
D-4 TAHERA SHAFIQ,
D-5 FARIDA ARIF,
D-6 FATEMA DAHODWALA,

Defendants.

MOTION FOR REVOCATION OF DETENTION ORDER

Detroit, Michigan - Wednesday, July 19, 2017

Appearances:

Sara D. Woodward
Malisa Dubal
United States Attorney's Office
211 W. Fort, Suite 2001
Detroit, MI 48226
(313) 226-9180
Email: sara.woodward@usdoj.gov
On behalf of Plaintiff

Shannon M. Smith
The Law Offices of Shannon M. Smith, P.C.
1668 South Telegraph Rd, Suite 140
Bloomfield Hills, MI 48302
248-636-2595
Email: attorneyshannon@gmail.com
On behalf of Defendant Nagarwala

- - -

Suzanne Jacques, Official Court Reporter
email: jacques@transcriptorders.com

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

APPEARANCES (Continued):

Mary Chartier-Mittendorf
1905 Abbot Road, Suite 1
East Lansing, MI 48823
517-885-3305
Email: mary@cndefenders.com
On behalf of D-2 Fakhruddin Attar

Matthew R. Newburg
Newburg Law, PLLC
4112 W. St. Joe Highway
Suite C
Lansing, MI 48917
517-505-2323
Email: matt@newburglaw.com
On behalf of D-3 Farida Attar

- - -

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

I N D E X

- - -

<u>Proceeding</u>	<u>Page</u>
Motion for Revocation of Detention Order	
Argument by Ms. Smith	5
Response by Ms. Woodward	10
Ruling of the Court	17
Comments by Ms. Smith	20
Conference Re: Discovery	24
Certificate of Court Reporter	37

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 Detroit, Michigan

2 Wednesday, July 19, 2017

3 11:03 a.m.

4 - - -

5 LAW CLERK: Calling case number 17-20274, United
6 States of America vs. Nagarwala.

7 THE COURT: May we have appearances, starting
8 with the government, please?

9 MS. WOODWARD: Good morning, Your Honor,
10 Sara Woodward and Malisa Dubal on behalf of the United
11 States. With us at counsel table is Special Agent Kevin
12 Swanson with the FBI, and Special Agent Lisa Keith from the
13 Department of Homeland Security.

14 THE COURT: Okay. Thank you. Counsel, how are
15 you today?

16 MS. SMITH: Fine, thank you. How are you?

17 THE COURT: Good.

18 MS. SMITH: My name is Shannon Smith, and I
19 represent Dr. Jumana Nagarwala, who is to my right.

20 MS. CHARTIER: Good morning, Your Honor, Mary
21 Chartier on behalf of Dr. Fakhruddin Attar.

22 MS. DUBAL: Good morning, Your Honor, Matt
23 Newburg on behalf of Farida Attar, who is also to my right.

24 THE COURT: Okay. You may all be seated.

25 Let the record reflect that today is the date

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 and time scheduled for a hearing, a motion for revocation of
2 detention order. The Court has had an opportunity to read
3 the motion, have had an opportunity to read the government's
4 response to the motion, and I've had an opportunity to read
5 the reply to the government's motion, and the response to
6 defendant's motion.

7 I also have a copy of the pretrial service
8 report that was generated in this particular matter.

9 Starting with the government, is there anything
10 else I should have before me that I do not have?

11 MS. WOODWARD: No, Your Honor.

12 THE COURT: And the defense?

13 MS. SMITH: No, Your Honor.

14 THE COURT: Okay. This is the defense motion.
15 You may proceed, counsel.

16 MS. SMITH: Are you okay if I stay at the table,
17 Your Honor?

18 THE COURT: Wherever you feel the most
19 comfortable is fine.

20 MS. SMITH: Thank you, Judge.

21 Your Honor, the presumption of innocence, the
22 facts of this case, the statutory requirements, mandate that
23 Dr. Nagarwala be released, like every other defendant who is
24 indicted in this case. While there is a considerable
25 factual dispute about what took place and what happened in

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 this case, those are issues for trial, and only, in part, to
2 assess the danger that Dr. Nagarwala presents to the
3 community.

4 Even in the materials that the government
5 provided this Court in Exhibit A of their materials, one of
6 the articles shows that there is little consensus about how
7 the actual procedure is supposed work among the Dawoodi
8 Bohra people who practice this procedure. I will not
9 belabor the Court with the facts of this case, as those will
10 be relevant issues at trial and in future hearings, but
11 there is certainly a dispute over the facts of the case that
12 will be coming forward in future litigation.

13 With respect to this case, this is about far
14 more than just Dr. Jumana Nagarwala. The community that
15 Dr. Nagarwala is from is supporting her in this matter, as
16 the Court can see from the number of community members in
17 the audience.

18 Dr. Nagarwala intends to fight this case because
19 it is a fight about a religious practice that is sacred to
20 not only her but also her entire community, the entire
21 religion, and it will have impact on this community
22 throughout the world.

23 Dr. Nagarwala is not intending to let any one of
24 her community members down by fleeing or not fighting this
25 case.

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 When the Court has to consider whether Jumana
2 Nagarwala poses a risk of flight, not only did Dr. Nagarwala
3 tell the government of her plans to leave the country at the
4 initial meeting in this investigation, it was the first
5 thing she said on a wiretap phone call between herself and
6 the forensic interviewer who was interviewing her daughter.

7 Dr. Nagarwala got on the phone and said, I need
8 to talk to you today because I have travel plans to leave
9 the country, and if I don't talk to you today, it's not
10 going to be until the 15th when I return. They asked for
11 the specifics of all of her travel arrangements, she told
12 them all of the travel arrangements and made a point to set
13 up an appointment at her home later that day to be sure she
14 could begin cooperating in this investigation.

15 Further, because there is wiretap information in
16 this case, I have listened to April 10th through the
17 following days where Dr. Nagarwala was aware of the
18 investigation. I will state for the record that she is not
19 a seasoned criminal, and her calls are open, and the
20 discussions on those calls provide a lot of information, but
21 there is not one point where Dr. Nagarwala, in communicating
22 with any of the community members, close family members, her
23 husband, not one time does Dr. Nagarwala say, I'm getting on
24 that flight to Kenya and I will not be coming back. Not
25 once does she ask somebody overseas, can I stay with you

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 once I get to Kenya?

2 There is absolutely no evidence that Dr.
3 Nagarwala posed a risk of flight, and based on the
4 importance of this case to her and this entire community,
5 she will not flee the country, and adequate protections can
6 be made to be sure of that.

7 While the Court is not required to consider the
8 amount of discovery, or discovery issues, or the length of
9 time this case will take, I do think it's an important
10 consideration for the Court to make, and the reason is
11 because I have received thousands of files, much of which
12 are in another language that myself and no person in my
13 office can understand. My client is going to have to go
14 through approximately 16,000 files and help me understand
15 what they are about.

16 If you spend a minute on each of those files, it
17 would take 233 hours just to listen to those files and
18 determine what they are. That's a substantial amount of
19 time I will need to spend with my client to go through those
20 materials.

21 Additionally, there were wiretap calls for days
22 that are in part English and in part a foreign language.
23 The government has provided no transcripts, no information
24 about the specifics of what they believe those calls
25 include. I will also have to spend hours with my client

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 preparing for those materials.

2 As my pleadings indicate, I have received
3 absolutely no discovery from the government with respect to
4 the medical records of even the first two alleged victims
5 who were from April of this year. We have asked, as the
6 defense team, repeatedly, for the records. We have been met
7 with, next week, I'm getting those to you. For that reason,
8 we have not filed a motion yet. However, it has become
9 clear this is going to be a discovery fight.

10 We were also told, with respect to the
11 discovery, that the government is treating some of the
12 photographs as if they were child pornography. That is
13 going to require some additional fights in this court
14 because they are not and should not be considered like child
15 pornography.

16 In addition to that, we were provided a wiretap
17 affidavit that's approximately 70 pages long, and we were
18 thankful to receive something in the way of discovery, but
19 page after page of redacted information leaves us unable to
20 assess the probable cause elements in this case, and I'm
21 literally going page after page.

22 This is the example of the information the
23 government has that they are not giving to us that are going
24 to create serious discovery issues that we will be
25 litigating before this Court. That will prolong the

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 litigation, in addition to the fact that we believe other
2 defendants will be added through superseding indictments.

3 This case, the facts of it, involved parents who
4 brought their children Dr. Nagarwala for a procedure, a
5 procedure that's been highly disputed back and forth.
6 Dr. Nagarwala does not pose a danger to the community in the
7 way that some defendants do. She was not out, randomly
8 attacking people, doing anything of the sort. There are
9 sufficient pretrial conditions that can be given to
10 Dr. Nagarwala. She is no longer working as a medical
11 doctor. She will no longer be at the Burhani Clinic, as it
12 no longer exists. Dr. Nagarwala is amenable to having no
13 contact with community members, with the exception of her
14 husband and close family members, her children.

15 So, Your Honor, we would ask that this Court
16 allow pretrial release, with conditions similar to those
17 that have been placed on the Attars.

18 Thank you.

19 THE COURT: Thank you.

20 Government.

21 (11:13 a.m.)

22 MS. WOODWARD: Good morning, Your Honor.

23 As the Court is aware, the defendant has filed a
24 motion for bond, and the Court's indicated that you have
25 received our response under seal. The briefing in this case

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 has been extensive, and I know that the Court is familiar
2 with the facts contained in the pleadings, within the
3 Pretrial Services report, the superseding indictment, as
4 well as the briefs of the parties.

5 That briefing, as well as Ms. Smith's argument
6 today, does raise many, many issues. Obviously, there are
7 some discovery disputes, and there is also a dispute over
8 the nature of the procedure performed by Dr. Nagarwala, and
9 those issues, while important, are not something that the
10 Court needs to resolve today.

11 As far as discovery goes, we will continue to
12 work with Ms. Smith and the other defense attorneys in this
13 case to resolve our issues and fully comply with our
14 discovery obligations, of which we are aware, and trial in
15 this case will be the ultimate determination of the facts
16 here, and what happened to the victims in this case.

17 The question for the Court today is somewhat
18 simpler, yet extremely important to both the defendant and
19 the government, and that question is whether the defendant
20 will be released on bond or remain detained pending trial.

21 It is the government's strong position that
22 there are simply no conditions that can reasonably assure
23 the safety of the community, because for 12 years, the
24 defendant, a highly trained medical doctor, cut the genitals
25 of countless 7-year-old girls. This was not only medically

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 unnecessary, but it also caused permanent alteration and
2 damage to the genitals of these victims. And importantly,
3 the defendant was aware that this violation was a violation
4 of her oath as a doctor and also illegal, but she continued
5 to do it anyway, and her conduct demonstrates that there is
6 no way for the Court or Pretrial Services to ensure that she
7 will stop committing this crime and that she will not cut
8 another child.

9 Of course, the motion for bond here is governed
10 by the four factors enumerated in the Bail Reform Act, and
11 this is a presumption case. There is a rebuttable
12 presumption in favor of detention due to one of the crimes
13 that the defendant is charged with.

14 The first factor for the Court to consider is
15 the nature and seriousness of the offense. She is charged
16 with FGM-related crimes, conspiracy to engage in FGM(female
17 genital mutilation), substantive counts of FGM for four
18 minor victims, as well as conspiracy to transport a minor
19 with intent to engage in criminal sexual activity.

20 Female genital mutilation itself, and the crimes
21 related to FGM, is an extremely serious crime. It involves
22 harm to minor victims, which is a factor for the Court to
23 consider, and in my brief, I set out some of the background
24 about FGM.

25 But even putting aside the literature on FGM,

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 what we know about the facts in this case are that for
2 approximately 12 years, this defendant, a medical doctor,
3 saw young girls at Dr. Attar's clinic. There's no dispute
4 that when she saw them she would pull down their pants and
5 perform a procedure on their genitals. This is clearly not
6 a medical procedure, she did not bill or keep any records of
7 these procedures. From the medical evidence and the victim
8 disclosures, we know that this procedure involved cutting
9 and loss of blood. The genitals of Dr. Nagarwala's victims
10 were, as a result, permanently altered. She may contend
11 that what she did was something else, although we're unclear
12 on what it is she contends that she did.

13 But the mere touching of the genitals of a young
14 girl for no medical purpose in itself would be a violation
15 of the law. She was not doing this as a medical doctor.
16 But what we have here is so much worse than merely touching
17 their genitals. She cut her victims severely. And the
18 medical evidence here is discussed in the government's
19 brief, and as the Court knows, for some victims, the
20 alterations to the victims' genitals were dramatic and
21 terrible, and I draw the Court's attention to the medical
22 results for Minor Victim 4 discussed in our brief.

23 And the defendant also drew victims to Michigan
24 from other states, from around the country. She's charged
25 with the FGM procedure for the two victims from Minnesota,

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 but there are others that came here from around the country,
2 and because she was a medical doctor, parents trusted her,
3 and she encouraged parents to travel here to see her for
4 this procedure. And for the Minnesota victims alone, they
5 would have driven 14 hours to see her at Dr. Attar's clinic.

6 But Dr. Nagarwala is not only charged with
7 FGM-related crimes, she's also charged with obstructing an
8 official -- conspiracy to obstruct an official proceeding,
9 as well as making a false statement to a federal officer.
10 Both of those crimes are also serious.

11 For the obstruction, what we know is that
12 Dr. Nagarwala talked to Dr. Attar, and together they tried
13 to devise a story to tell the police. But most importantly,
14 we know that Dr. Nagarwala talked to two parents that
15 brought their children to her for this procedure, and she
16 encouraged both of them not to cooperate with law
17 enforcement, to deny that a procedure had taken place, and
18 to affirmatively make false statements.

19 So the nature and seriousness of this offense,
20 of all of the offenses here, weighs heavily in favor of
21 detention.

22 The next factor the Court considers is the
23 weight of the evidence regarding the defendant's
24 dangerousness and risk of flight.

25 For risk of flight, I think the facts are not in

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 dispute. What we know is that the defendant was boarding an
2 international flight when she was arrested. That she has an
3 explanation for her travel does not make it less
4 significant. She has --

5 THE COURT: The government doesn't deny that
6 they knew that she had prearranged that trip?

7 MS. WOODWARD: Agreed, yes, we don't deny that
8 she had already made those arrangements.

9 THE COURT: And that she disclosed it.

10 MS. WOODWARD: She did disclose them, yes, and
11 that -- but what's significant is that she knew of this
12 investigation, of the Child Protective Services
13 Investigation into her, and she decided to leave anyway.

14 I'm not contending -- well, I guess we don't
15 know whether she was fleeing, we don't know whether she
16 would have come back, but it's important that she does have
17 significant international ties, significant financial
18 resources, and she, in fact, did have international travel
19 plans. I think that that sets her apart from the Attars
20 here, although, she's set apart from them in the facts of
21 this case, and her conduct, as well.

22 The weight of the evidence with regard to the
23 defendant's dangerousness is also extremely strong. There
24 is -- there are victim disclosures, multiple victim
25 disclosures, medical evidence, parent disclosures and cell

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 phone evidence, and there's also strong evidence that the
2 defendant was not deterred by her knowledge that this was a
3 federal crime, and the evidence of the obstructive behavior
4 is also strong. And what this comes down to, Your Honor, is
5 that there is simply no way that this Court or Pretrial
6 Services can ensure that this defendant does not engage in
7 another FGM procedure.

8 This procedure, referred to as khatna or khafz
9 can be performed, and often is performed, in a house. It
10 does not need to be performed in a medical clinic or at the
11 Burhani Medical Clinic. It takes only a few minutes to
12 complete, and there is simply no way for Pretrial Services
13 to ensure that children are not brought to the defendant for
14 this procedure.

15 The defendant could be ordered not to have
16 contact with children, but unless she is constantly
17 monitored and surveilled and someone is watching her front
18 door, it's impossible to ensure that that would not happen.
19 But what we do know is that the defendant is extremely
20 committed to this practice. She believes that it's
21 important, she believes it's worth doing even though she
22 knows it's a violation of the law, and, therefore, the risk
23 of harm to children is simply too great, too great for the
24 Court to take on, too great to ask Pretrial Services to
25 monitor.

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 But there's also a risk of continued obstructive
2 behavior. There is pressure on parents and children within
3 this community not to cooperate with law enforcement, and it
4 is impossible to know exactly who the witnesses to this
5 conduct are. It's impossible to know how many children have
6 been cut by Dr. Nagarwala. There's literally an endless
7 list of potential victims and witnesses. Most female
8 members of her community may be witnesses in some way, and
9 there's no way to limit her contact with all potential
10 victims and witnesses.

11 The Court also considers the history and
12 characteristics of the person, and, here, I concede that
13 some of those history and characteristics would weigh in
14 favor of release, but some weigh in favor of detention, and
15 those are, her international family ties, the fact that she
16 is currently unemployed, the fact that she has financial
17 resources that are extensive, and a strong motivation to
18 flee.

19 And I guess I would ask the Court at this time
20 if you have any questions for us based on what you've seen
21 in the pleadings, and everything that's before you.

22 THE COURT: I have no questions at this time.
23 Anything further that the defense wishes to say?

24 MS. SMITH: No, Your Honor. Thank you.

25 THE COURT: This is a really tough case, to be

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 honest. Number one, I think the arguments on both sides as
2 to the facts is not real relevant today for me because I
3 think there is a presumption of innocence, and the plaintiff
4 is clothed with that, and that continues all through these
5 proceedings, and not only today but until such time as the
6 trier of fact makes a different determination. So the Court
7 is burdened with, not burdened with, but certainly has to
8 take that as a very strong consideration.

9 Also, the charge itself, it's obviously a
10 different charge that I've never seen one before, I don't
11 think anybody has seen one before, and it does have a
12 penalty that is very severe. But I think I have to look at
13 this, as I say, at least at this point, the grand jury has
14 issued an indictment, the indictment says that there -- a
15 crime was committed and that there's probable cause that the
16 accused committed that crime. What the facts are, again,
17 the trier of fact will determine.

18 The nature of the crime in this matter, I think
19 everybody agrees, and I heard it many times from both sides,
20 it is a religious belief that generated that. Every kind of
21 crime has some kind of motive, and motive is not always the
22 consideration, but here, I don't think anybody disagrees
23 that the motive was a religious motive, and, of course,
24 during the proceedings, I've already been exposed to it in
25 the pleadings, constitutional rights, and so forth, will be

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 discussed.

2 My main thing is I think we can fashion
3 something that will protect the public because we can
4 fashion something that will be able to, in real time, trace
5 her movements, and so forth.

6 My big concern in this particular matter is one
7 of flight, and I understand that she has very strong ties to
8 the community here in Detroit and to the United States. She
9 is well educated, and that should not be held against her,
10 by any means, but this particular case does involve a
11 penalty that's very, very severe, and no matter what one's
12 beliefs may be, it's still a severe penalty that will impact
13 the defendant and will impact, of course, all of those loved
14 ones that she cares about.

15 It's just a very tough, tough decision. I've
16 been trying to figure out some way of being able to satisfy
17 myself in terms of being able to guarantee, for lack of a
18 better word, no flight, that she will appear when and where
19 directed, and take into consideration that, along with the
20 presumption, and see if there's something that can overcome
21 the presumption, and as I say, I've gone back and forth, and
22 so forth, I've thought about different ways of doing it, and
23 because of the nature of the potential penalty in this
24 particular matter, I'm not so sure that I can come up with a
25 solution that will guarantee her appearance when and where

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 directed by the Court.

2 And the community strength and backing is very
3 important, but it's a double-edged sword, because, on the
4 same token, it can be used to argue that perhaps that would
5 be a good source of flight, and so forth.

6 So as of today, I have tried to come up with
7 some way. I've thought about the GPS, I've thought about,
8 as we've done before, some kind of special housing in terms
9 of, so that there can be some communication. I think the
10 assistance of counsel argument is very, very important, and
11 especially in this case where there are some language
12 issues, and other things.

13 As of today, I can't come up, in my mind, with
14 anything that would overcome that presumption at this time.
15 Again, I'm not concerned about the harm to the community. I
16 think that we can do that very adequately. I am concerned
17 about the flight, and I just, I think, at this point,
18 because of the presumption, that I have to not grant the
19 motion today.

20 But counsel I'd like to hear if you have
21 something else, that's why I'm here, if there's something
22 else that you can enlighten me on that --

23 MS. SMITH: Your Honor, I would just like to
24 state for the Court that my client's passport has already
25 been surrendered, that the passports of her two minor

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 children have already been surrendered in the Child
2 Protective Services matter; that, while Dr. Nagarwala has
3 international ties, she has far more substantial ties here.
4 She's not going to leave her children, husband, parents, and
5 all the loved ones she cares about.

6 I just would ask the Court to do something
7 similar to what was done for the Attars. She could be
8 placed on a GPS tether, not allowed to leave even a room, a
9 hotel room, or her house, she would not be able to leave
10 without them being able to track where she is going. And so
11 I do believe there's conditions that can be put in place to
12 make sure she stays put. And she will stay put, especially
13 without a passport or any means to be able to secure those
14 things.

15 I don't see that she's in any different
16 position, really, than the Attars, and so --

17 THE COURT: The difference in position, to be
18 honest with you, and I've thought about this ever since you
19 filed your motion, and the difference is that she is going
20 to be subject to a much more severe penalty, number one.
21 Number two is that, in terms of -- again, I don't know the
22 facts, and I'm not here to discuss the facts, but at least
23 as to the involvement, we know that hers was a different
24 kind of involvement than the other defendants, and the only
25 reason that has any significance is because those kinds of

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 things go towards the penalty or the imposition of sentence,
2 and therefore she is facing a much more severe sentence,
3 and, therefore -- and again, I'm not saying she would do
4 this, but she certainly has the -- she's in a different
5 position in making a decision whether or not she should flee
6 or not flee, than the others are in this case.

7 And I'm not suggesting that she would make that
8 decision, I'm suggesting that I know, and I've seen it
9 before, that you don't need travel documents to get out of
10 this country. You can get out of this country without
11 travel documents, and so forth.

12 MS. SMITH: I do want to clear it up for the
13 record that Dr. Attar faces the same presumption
14 Dr. Nagarwala does. They are both charged with traveling
15 with intent to commit a sexual act.

16 THE COURT: I understand.

17 MS. SMITH: That crime, when you look at the
18 Mann Act and the prodigy of the Mann Act and everything
19 that's come before, it's not the right crime to charge
20 either one of these defendants with. So she really is not
21 in a much different position from Dr. Attar in terms of the
22 charges, the penalty she faces, and also that same argument
23 that Ms. Chartier put together the last time we were in
24 court about how that life offense is not even really the
25 appropriate charge, and it's something we intend to file a

Motion for Revocation of Detention Order
Wednesday, July 19, 2017

1 motion on.

2 THE COURT: I can't get into that because I
3 don't know, and I would not want to make a factual
4 determination. All I know is that the grand jury made a
5 determination that that was the charge, and that they had --
6 if they had done their job, which I assume they did, that
7 they made that determination, and that they made -- and that
8 that crime had been committed and that there's probable
9 cause to believe that the accused committed it.

10 So I have to take that, at least that, because I
11 haven't heard any testimony, and I don't want to make any
12 findings of fact, but at this point, and I'm not saying
13 that -- as I say, I think with the presumption of innocence,
14 I'm trying to weigh her right to presumption of innocence
15 with the right of society to make sure that she doesn't
16 flee. I haven't been able to come up with something that
17 would convince me that the presumption has been overcome.

18 And I understand. I've been thinking about GPS,
19 I've been thinking about, you know, some custodial, and also
20 thinking about your client. I think she's well trained,
21 she's a citizen, she was born here, her kids are here, her
22 mother-in-law is here, and so forth. That would be a lot to
23 leave, but it's also, in terms of the incentive to leave,
24 the penalty is so great that there is a large incentive to
25 leave at this point. That does not overcome the

July 19, 2017

1 presumption.

2 So at this point, I'm going to deny the motion,
3 and I say at this point because, certainly, I would be more
4 than happy to look at it again if there's some things that
5 change, or if there's some situations that maybe more
6 assurances could be given and I can be convinced that the
7 presumption perhaps can be overcome. But as I say, my
8 concern is only that the issue of appearing when and where
9 directed, I don't think -- I think we can do a lot in terms
10 of making sure that the community is protected.

11 So as of today, I'm going to deny the motion,
12 but I certainly, if you come up with something that perhaps
13 can give us some more assurances, I'd be more than happy to
14 look at it.

15
16 But there's another issue I think we have to
17 talk about also today while we have everybody here, and all
18 the parties. I'm concerned about discovery, and I'm looking
19 at the government. I don't think there should be a fight
20 over discovery in this case for a couple reasons. Number
21 one is, I'll tell you right now, I believe, especially in a
22 case like this, that there has to be some good discovery
23 because otherwise this case will linger on, and on, and on,
24 and it won't be fair to anybody at all.

25 So I can't -- I'm not in a position to make any

July 19, 2017

1 rulings on discovery; however, just my thought, in terms of
2 the language barrier, if the government is turning over
3 information and it's in a language other than English, and
4 they have a transcript or they have it already interpreted,
5 I'm telling you right now, I'm going to order that any
6 transcripts you have, anything that's already interpreted,
7 to make sure that it goes to the defense because there's no
8 reason that they have to be put to the expense and the time,
9 and everything else, if the government already has it. And
10 if we ever went to trial in this matter, it's going to be
11 used by the government, and, therefore, we'll save a lot of
12 time in terms of verification and credibility of the
13 interpretation.

14 Again, page after page of redacted, it could be
15 right, it could be wrong, I don't know, and I'm not making a
16 ruling. However, I think -- and again, there has been some
17 argument today that the government may have other people in
18 mind they want to indict. I'm urging the government to do
19 it ASAP because we want to move this case. It's not fair to
20 the defendants, it's not fair to their community, it's not
21 fair to the issue that we don't move this case, and move it
22 along in an appropriate manner so that we can bring it to
23 trial, and to be able to discuss those issues which each
24 side has raised throughout the proceedings so far.

25 And last but not least, please work together in

July 19, 2017

1 terms of discovery, and if you have a dispute maybe
2 somewhere down the line, what we'll do is, and, again, talk
3 about it, and so forth, and we'll have discovery hearings
4 every once in awhile so that we can get this thing moving.
5 I don't want to be inundated with paper all the time, and
6 the expense and time of going through it, so if you get to a
7 point where it really is becoming a fight, so to speak, then
8 file a motion, let me know, and then we will talk about some
9 kind of discovery program.

10 Okay. Anything else that we should talk about
11 today?

12 MS. WOODWARD: No, Your Honor. I'll just
13 respond to what you said, and I understand what you're
14 saying, and we will comply with our discovery obligations as
15 you've directed, and as we intend to do.

16 THE COURT: Okay.

17 MS. WOODWARD: If there's something we can't
18 resolve, we'll let you know.

19 THE COURT: Okay. Discovery obligations -- I
20 appreciate that, and I know your office always does, but
21 your office generally has a broader policy than just
22 obligations.

23 MS. WOODWARD: Sure.

24 THE COURT: And I would ask that it carry over
25 to this case, as well.

Conference Re: Discovery
July 19, 2017

1 MS. WOODWARD: Understood.

2 THE COURT: Okay. Counsel.

3 MS. CHARTIER: Your Honor, it's been three
4 months, and in all due respect, we keep hearing the same
5 thing, that the government will comply with their discovery
6 obligations. I don't believe they have.

7 They repeatedly have said that we'll get things
8 like medical records, and it's been three months that it's
9 been in their possession and we haven't got it.

10 So is it possible to get a firm date, so then we
11 know if we don't have them, for example, by Friday that we
12 will be filing a discovery motion with the court. We keep
13 holding back on that because we keep getting assured that
14 they're coming, and they're not coming. So I don't know if
15 the government is willing to give us that date today, or, if
16 not, we'll just go back and file our discovery motion.

17 THE COURT: Okay. Let's talk about one thing,
18 since we have everybody here. Tell me what's outstanding
19 that you think should have already been provided to you.

20 MS. CHARTIER: Again, I understand the Jencks
21 Act, and we'd love to get that, and we certainly hope we get
22 that in advance of trial. But medical records, we keep
23 hearing --

24 THE COURT: Let's talk about medical records.
25 When will they receive medical records?

July 19, 2017

1 MS. WOODWARD: I'm happy to respond, Your Honor.

2 As of right now, there are CDs being burned for
3 the defendants. I need to check them and make sure they're
4 ready to go out today or tomorrow, but those are under way,
5 the medical records.

6 MS. CHARTIER: So that would be by this week,
7 then?

8 MS. WOODWARD: Correct.

9 THE COURT: By Friday.

10 MS. CHARTIER: There are also videos and
11 photographs of the medical procedures. Ms. Woodward has
12 indicated they're treating them as child pornography and
13 they will not be turning them over to us.

14 MS. WOODWARD: That's an unfair
15 characterization.

16 THE COURT: Okay. Tell me what your position
17 is.

18 MS. WOODWARD: My position is these are videos
19 and images of children's genitalia. They are incredibly
20 sensitive. That we will make them available to the defense
21 to view as we are required to do, but that we will not be
22 turning over copies of this very sensitive material.

23 I explained to Ms. Chartier that we have a
24 procedure in place to do that, and likened it to child
25 pornography, that I have an obligation to provide to the

Conference Re: Discovery
July 19, 2017

1 defense an opportunity to review, but I do not give out
2 copies. This is the practice of child abuse pediatricians
3 who I've consulted with, not to turn over these images and
4 videos.

5 THE COURT: Well, I think that we can do that
6 with the defendants that are out right now. As to
7 Dr. Nagarwala, how do you suggest -- she has a right to see
8 those also. How do you suggest that that's accomplished?

9 MS. WOODWARD: Arrangements can be made for her
10 to view them in the facility. We do that in child
11 pornography cases when the defendants right have the right
12 to see the evidence.

13 THE COURT: And you're willing to do that as
14 soon as arrangements can be made, is that correct?

15 MS. WOODWARD: Yes.

16 Now, those photographs and videos are not
17 currently in my custody. They're in the custody of the
18 child abuse pediatricians that did the exams, so we need to
19 work with them to come up with a procedure, whether we use a
20 secure, end-to-end encrypted digital way for the defense
21 attorneys to view them in their office, or whether we make
22 them available at the FBI, are the sorts of things I want to
23 discuss with --

24 THE COURT: Why don't you get together by next
25 Friday so you have an answer to that. I think it's an

July 19, 2017

1 important consideration as part of their preparation,
2 especially what they've indicated in their pleadings, that
3 this would be very important to view.

4 MS. CHARTIER: Absolutely, Your Honor.

5 THE COURT: If you feel, after viewing it, that
6 it limits you and that there's some reason that this
7 particular arrangement would not be acceptable from a
8 defense standpoint, then you'll let me know. But at least
9 try it, work out some arrangement, talk to your doctors,
10 people that you have to talk to so, again, by late Friday
11 you have some arrangement on how to make this thing happen.

12 MS. CHARTIER: Your Honor, I can tell the Court
13 right now, I've indicated this to Ms. Woodward, the problem
14 with us coming down and viewing them, for example, at the
15 FBI office, is not just related to our clients or
16 Dr. Nagarwala, but it's also related to our experts. Our
17 experts are potentially all around the country.
18 Ms. Woodward had indicated there may be a way to work around
19 that if we provide information about our experts to the
20 government. I don't believe that we have to do that.

21 THE COURT: I don't believe you have to do it.

22 MS. CHARTIER: I agree. So that's why we --
23 we're officers of the court. Even if they are treated akin
24 to child pornography, they're not child pornography. We
25 signed a protective order, we're not going to be

July 19, 2017

1 distributing those photographs and the video, but in terms
2 of preparing a defense for our clients, we need access to
3 that, and we need access to those materials to share with
4 our experts.

5 THE COURT: Okay. But not to give to your
6 experts, necessarily.

7 MS. CHARTIER: They could view them, for
8 example. I mean, this is no different than any other case.
9 These are medical records, they're not child pornography.
10 The doctor who created them hasn't been charged with child
11 pornography.

12 THE COURT: But there's a real interest in
13 making sure that they're not disseminated anywhere. And you
14 are officers of the court, we do have a protective order. I
15 think both sides can be satisfied. I think you have no
16 obligation to tell the government who your experts are at
17 this point.

18 I suspect, I hope -- you have to show these
19 things to the expert before you know their opinion, and you
20 certainly don't want to disclose who they are until such
21 time as --

22 MS. CHARTIER: Correct.

23 THE COURT: -- as you decide that you may or may
24 not use them as experts, or use them in any capacity you
25 want.

July 19, 2017

1 Number one is, I think you should, by the end of
2 the week, be able to have the attorneys and the clients be
3 able to see these first. Then, if you can't work out some
4 way, under a protective order of some kind, for the experts
5 to see them, and I think the suggestion that the use of the
6 attorney as the vehicle for showing them to the expert
7 without the expert having a copy, or anything of that
8 nature, until such time as it's needed, probably is a good
9 solution.

10 But see if you can work it out. If not, let me
11 know, file a motion. As I say, and I'm more than happy to
12 do that. But err in favor of more information than less.
13 I'm not going to interfere with Jencks or the government's
14 rights, because the government has rights also, very strong
15 rights. But on the same token, err in favor of the
16 credibility of the lawyers on both sides in this matter
17 being able to exercise their obligation under protective
18 orders, and so forth, and see if you can work it out. If
19 you can't, let me know.

20 I want to move the case as quickly and rapidly
21 as we can. It's an issue that has to be decided one way or
22 the other, and it is an issue that I know is of public
23 interest, and should be. Let's move it as quickly as we
24 can.

25 MS. WOODWARD: Just to clarify, Judge, you

July 19, 2017

1 mentioned by Friday. I want to be clear on what our
2 obligations are. So today is Wednesday. We will have a
3 conversation and attempt to come up with a process for that.

4 THE COURT: Yeah, maybe Friday is a little soon.

5 MS. WOODWARD: They can't -- I don't think it
6 would be possible to make them available for them to view by
7 Friday.

8 THE COURT: No, no, I'm hoping by Friday, you'll
9 sit down, you'll talk about it, you'll work something out,
10 and if you can't, you'll let me know. And Friday wasn't the
11 deadline to actually turn it over, but, like, the medical
12 records, I mean --

13 MS. WOODWARD: I understand the medical records
14 were different, and they will have those by Friday.

15 THE COURT: And I think that the other documents
16 are going to be important to them, too, but that may take a
17 little bit more in terms of how do we do it, how do we show
18 it to, you know, the defense may have to keep a log of who
19 they show it to without disclosing it to the government.
20 And that will protect all the defendants as well as have a
21 log of who they show it to.

22 And the order, the protective order always --
23 has already stated that they can't -- that it's on an
24 as-needed basis, so it's not -- they're going to have to
25 abide by that protective order, too. I think you can work

1 it out. I said Friday, maybe just to put pressure on both
2 sides to get it done so that we're not back here.

3 MS. CHARTIER: Two other issues as it relates to
4 discovery. The redaction Ms. Smith showed, pages and pages,
5 will that also be available Friday, at least partially
6 unredacted?

7 MS. WOODWARD: It's on the same CDs that we're
8 burning right now.

9 MS. CHARTIER: Great. Thank you.

10 And the final issue, and this may be the subject
11 of speaking with Mr. Hinojosa and the government, and filing
12 a motion, if needed, but Ms. Smith is correct in terms of
13 the number of hours that it will take to go through the
14 phone calls. Currently, Dr. Attar and Mrs. Attar can't do
15 that without a lawyer present, or someone from my firm,
16 because they can't have access to a computer.

17 So one of the issues is, while we like spending
18 time with them, it's a lot of hours to spend, and it will
19 drag on for months. If they had access to a computer, even
20 without internet access, they would be able to listen to the
21 phone calls themselves and not have to do it in our office.

22 So I would ask the Court to consider that now.
23 If not, we can see what we can work out, and file a motion
24 if needed.

25 THE COURT: Pretrial, if we -- if we --

July 19, 2017

1 Well, a computer that came from your office?

2 MS. CHARTIER: Yes, with no internet access.

3 THE COURT: No internet access, and it would be
4 totally erased except for those documents that have been
5 provided to you by the government so that they can listen to
6 it.

7 MS. CHARTIER: Correct. The documents are
8 actually on an external hard drive. So they would have a
9 computer with essentially nothing on it, and then the
10 external hard drive with the documents from the government.

11 THE COURT: And there won't be anything on
12 there, no WordPerfect or any --

13 MS. CHARTIER: Nothing. They have to hand write
14 their notes even now, to us.

15 THE COURT: Any problem with that?

16 MR. HINOJOSA: No, Your Honor.

17 THE COURT: That's fine.

18 MS. CHARTIER: Thank you.

19 THE COURT: I suspect that we're going to have
20 pretty much the same thing for Dr. Nagarwala, wherever she's
21 being housed, so that she can review it for you, also.

22 MS. SMITH: Yeah, and the complication, and the
23 reason it's so difficult is because in my office I have to
24 use three different laptops to access the types of files
25 they have. I have three different laptops, but it's not

July 19, 2017

1 just as simple as, here's a laptop, go ahead and go through
2 it. I literally have a stack of laptops we use to go
3 through the materials in this case. I can't drop off a
4 stack of laptops to the jail. So I need some direction from
5 the Court on what I can do, but that's -- I need her help, I
6 need her to be able to do that.

7 THE COURT: I understand. I don't know exactly.
8 I mean, if you can do it to one -- I just don't know. Why
9 don't you talk to the government, talk to -- apparently, you
10 can put it all on one.

11 MS. CHARTIER: Well, I say that, but I'm not the
12 tech person in our office. So I know that everything is on
13 an external hard drive, and I'm going to ask the tech
14 person. If there's a problem, I'm sure I'd be contacting --

15 THE COURT: Yeah, or just do it piecemeal. Take
16 one computer, download on an external hard drive, everything
17 else is wiped out, and when she's through doing that, you'll
18 bring her another one. Same thing here.

19 MS. CHARTIER: I don't know if it's the same --

20 THE COURT: I'm not a computer person, I have no
21 idea. I know it can be worked out, so --

22 MS. CHARTIER: The access is something that I
23 don't know if you would know that, but, for example, when
24 Dr. Attar was in Milan, we had made those arrangements
25 initially, and then when I went to Milan, they said

Conference Re: Discovery
July 19, 2017

1 absolutely not.

2 THE COURT: I know. I think when Jamie from the
3 Marshal's service was here, every jail is different. So
4 we'll have to cross those bridges when we get to them, and
5 go from there.

6 MS. SMITH: Thank you.

7 THE COURT: Okay. Anything else? Okay. Thank
8 you. We stand in recess.

9 (Proceedings concluded at 11:46 a.m.)

10 - - -

11

12 **C E R T I F I C A T I O N**

13

14 I, Suzanne Jacques, Official Court Reporter for the United
15 States District Court, Eastern District of Michigan, Southern
16 Division, hereby certify that the foregoing is a correct
17 transcript of the proceedings in the above-entitled cause on the
18 date set forth.

19

20

21 <u>s/ Suzanne Jacques</u>	<u>August 6, 2017</u>
Suzanne Jacques, RPR, RMR, CRR, FCRR	Date
22 Official Court Reporter	
23 Eastern District of Michigan	

23

24 - - -

25